THE 'TRUMPING EFFECT' OF ANTI-TERRORISM LEGISLATIONS: THE CASE OF CAMEROON

Dr. Ngangum Peter Tiako

Université Libre de Bruxelles, Department of Information & Communications Sciences

Abstract

The September 11 terrorist attacks in America 'changed the world' and many years after, acts of terrorism in various forms have endangered and killed innocent people in Cameroon, Nigeria, Kenya, Somalia, Belgium, France, Spain, Britain etc., jeopardized fundamental freedoms and seriously undermined the dignity of the human population. States have therefore been under an obligation to take appropriate measures to protect the fundamental rights and freedom of everyone within their jurisdictions against terrorist acts. In this vein, governments across the globe have adopted new laws, and ameliorated and expanded the use of old laws to monitor communications and counter terrorism. Thus, in 2014 the government of Cameroon passed *Law No. 2014/028* of 23 December on the suppression of acts of terrorism. The main thrust of the law is the redefinition of national security to incorporate the risk of terrorist actions undertaken by any individual or group. Although the government has argued that the new law is necessary to contain the Boko-Haram terrorist group which has carried out kidnappings and attacks in Cameroon, this paper argues that there is a dangerous tendency to legitimize human rights violations under the guise of combating terrorism. In practice, this leads to a 'trumping effect', where the suppression of acts of terrorism legislations effectively override or take precedence over fundamental rights such as freedom of expression, press freedom, the right to peaceful protest and assembly, as well as accountability and transparency. Drawing from literature review, documentary research, interviews and case law, this paper contends that while the threat of terrorism and the rise of anti-terrorism legislations to counter terrorism are justified, the existence of arbitrary legislations and the vague, broad and sweeping nature of such legislations remain potentially problematic for the protection of journalistic sources and other fundamental rights. This complexity is evident in Cameroon where the law on the suppression of acts of terrorism has been invoked to arrest, trial and detain journalists, peaceful protesters and Cameroon anglophone activists. The above concerns point to the need for reforms of the existing laws on the suppression of acts of terrorism and the need for states to reconcile a suitable balance in this new context between protecting the human rights of its citizens as potential victims of terrorism and protecting the human rights of alleged terrorists.

Keywords

Cameroon/Terrorism/Counter Terrorism/Human Rights/Freedom of Expression/ Press Freedom/Peaceful Protest and Assembly.

1. Introduction

Terrorism is not a new issue on the human rights agenda. For many years, various forms of terrorism have endangered and killed innocent civilians, jeopardized human rights and seriously impaired the dignity of the human population. For instance, in 1998 suicide bombers set off car bombs in vehicles which exploded at the US embassies in Nairobi, Kenya and Dar es Salam, Tanzania. In Nairobi, 213 people were killed and 4000 seriously injured. In Dar es Salam, 12 people were killed and 35 injured. Like Kenya, Nigeria, Chad, Ethiopia, US, France, Belgium, Germany, UK, Spain, Turkey, Cameroon has come under the fury and repressive hammer of acts of terrorism in all forms from terrorist groups. One of such groups is Boko-Haram in the northern part of Nigeria. The group is responsible for the kidnapping and killing of innocent schoolchildren in Nigeria. According to Amnesty International (AI), between July 2015 and July 2016, Boko Haram conducted at least 200 attacks, including 46 suicide bombings, in the Far North Regions of Cameroon, killing over 500 civilians and over 67 members of the security forces since 2014 (AI, 2016). Thus, Cameroon has come under the obligation to take suitable measures to protect the fundamental rights and freedoms of everyone living within its jurisdiction against the scourge of terrorism. However, after the September 11, 2001 terrorist attacks in America, the above scenario changed drastically, ushering in new and huge challenges to the human rights agenda. As the German Federal Minister for Foreign Affairs argued in his speech before the 58th session of the UN Commission on Human Rights, "the 11th September and its consequences have reoriented world politics and this is not without implications for human rights policy" (Schorlemer, 2003. 226).

Cameroon has an exemplary military and security pact with the USA, especially the partnership in the fight against Boko-Haram. The latter is not only supporting Cameroon with military equipment but more importantly, the US has sent a contingent of 300 troops to assist in intelligence provision to the Cameroonian defence and security forces on the war front. Furthermore, the US has opened the doors of its military academies to Cameroonian students (Meli, 2017). The call by the United States of America for a global partnership and campaign against terrorism provided the context for several initiatives by governments including Cameroon to tighten security legislations that have been realized at the expense of civil and political liberties. There is therefore a real danger that the war against terrorism is producing significant shifts in states' obligation to respect and protect human rights. However, as Schorlemer (2003: 266) contends "the battle

against terrorism itself is also understood as a fight for human rights. Clearly, states need to strike a balance in this new context between protecting the human rights of its citizens as potential victims of terrorism and protecting the human rights of alleged terrorists". Even more, as advocated by the Venice Commission, state security and fundamental rights are not competitive values, but they are each other's precondition. In other words, security is best protected by the enhancement and not the suppression or weakening of the rule of law, democratic values and human rights (Muma, 2017). Furthermore, the UN Security *Resolution 2178/2014* and the *Global Counter Terrorism Strategy* underlined that "effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing". This presupposes that in fulfilling their duties, state authorities (Cameroon) must ensure that measures purported to combat terrorism comply with state obligations under international human rights law (Muma, 2017).

This paper examines the 'trumping effects' of the Cameroon 2014 anti-terrorism legislation. It begins by delineating freedom of expression and peaceful protests in a human rights context, then moves on to discuss the constitution as the most critical legal construct that has a plethora of prerogatives that directly concerns freedom of expression and of the press and peaceful assembly, before going further to interrogate and analyze the 2014 law on the suppression of acts of terrorism.

2. Freedom of expression and peaceful protests in the human rights context

Both international and national law guarantees everyone the right to freedom of expression. For instance, *article 19(2)* of the *International Covenant on Civil and Political Rights* (ICCPR), one of the United Nations' two main human rights treaties, which has been ratified or acceded to by Cameroon in 1984 provides that:

> Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The above wording corresponds to *article 19* of the *Universal Declaration of Human Rights* (UDHR). Similar provisions also appear in the three main regional human rights treaties, the *African Charter on Human and People's Rights (Article 9*) which Cameroon ratified in 1989, the *European Convention on Human*

Rights (ECHR, Article 10(1), and the *American Convention on Human Rights (Article 13*).

Depending on the situation, peaceful protests (a core theme of this paper) may also be covered by the right to freedom of peaceful assembly, a closely related right often used interchangeably with the right to freedom of expression, and is codified in *article 20* of the UDHR, *article 21* of the ICCPR and *article 11* of the ECHR. However, the right to freedom of expression and assembly are not absolute and may be restricted by the national authorities in order to protect other relevant interests, for instance public order. *Article 19(3*) of the ICCPR requires, however, that any interference meet the following three conditions:

- The interference must be prescribed by law
- Must serve a legitimate aim, such as the protection of public order or the rights of others; and
- Must be necessary and proportionate for the achievement of that aim.

The Constitution

The existence of a constitution is an important in-road to the development of freedom of expression and of the press. It is therefore no coincidence that the constitutions of a growing number of nations have provided specific guarantees for the rights to freedom of expression, freedom of the press and of assembly. This is the case with many states which have embraced democratic and multiparty political systems and others who are currently in transition to democracy. A good example is Sweden, where its entire freedom of the press act, adopted in 1766, has constitutional status. This act makes relevant provisions on the right to information (Berger, 2007; Voorhoof, 1998). This wide-scale consensus through formal constitutional guarantees is also true as in the case of the First Amendment of the US Constitution of 1781. In like manner, more recent constitutions like those of Mali, Senegal, Zambia, Nigeria, Gabon and Cameroon have provided similar guarantees for freedom of expression.

The core of the constitutional protection of the above rights per se is the preamble of the Cameroon constitution. It affirms the attachment of the country to the fundamental freedoms enshrined in the UDHR, the Charter of the United Nations, and the ACHPR, and all duly ratified international conventions relating thereto. This paper argues that fundamental democratic rights are inscribed in

the preamble of the Cameroon constitution, i.e. the freedom of communication, of expression, of the press and of assembly, as well as the right to strike.

The question now is: with the threat of terrorism and the advent of the anti-terrorism legislation in Cameroon, are press freedom, freedom of expression and the public right to peaceful protests as guaranteed by the constitution respected? In trying to provide answers to the above question, the section below interrogates and appraised the law on the suppression of acts of terrorism, showing how the law has been evoked to arrest, trial and detain journalists, peaceful protesters and Cameroon anglophone activists.

Law No. 2014/028 of 23 December 2014 on the suppression of acts of terrorism

The law is divided into *four chapters* incorporating *17 sections*. *Chapter 1* is entitled general provisions and deals with the purpose and scope of the law while *chapter 2* focusses on offences and penalties. It contains *9 sections* addressing, inter-alia, acts of terrorism, financing of acts of terrorism, laundering of proceeds of terrorism, recruitment and training, criminal liability of corporate bodies, interruption of the offence or its effects, acclamation of acts of terrorism, false statement or defamatory reports and witness protection. *Chapter 3* is entitled special provisions and is composed of *6 sections*, that is remand in custody, referral before the competent court, mitigating circumstances, ancillary penalties, indefeasibility of court actions and penalties and waivers. The last chapter, composed of one section, is informed by the final provision of the law.

According to *chapter 2, section 2* of the above law:

> Whoever, acting alone as an accomplice or accessory, commits or threatens to commit an act likely to cause death, endanger physical integrity, cause bodily injury or material damage, destroy natural resources, the environment and cultural heritage with intent to: (a) intimidate the public, provoke a situation of terror or face the victim, the government and/or national and international organization to carry out or restrain from carrying out an act or renounce a particular position; (b) disrupt the national functioning of public services, the delivery of essential services to the public to create a crisis situation among the public; (c) create widespread insurrection in the country; (d) shall be punished with a death penalty.

The law moves on in *chapter 2, sections 3, 4 and 5* to provide a death penalty to all those who are guilty of 'financing acts of terrorism', 'laundering of the proceeds of terrorism' and 'recruitment and training of people' to participate in acts of terrorism. According to *chapter 2, section 3 (1)*:

> Whoever directly or indirectly provides or collects funds; provides or offers or collects funds with the aim of financing acts of terrorism and by whatever means, shall be punished with a death penalty.

Section 4 of the above chapter entitled laundering of proceeds of terrorism stipulates that:

> whoever procures, receives, keeps, converts, dissimulates or disguises goods that are proceeds or acts of terrorism; partakes in the use or sharing even occasionally, of proceeds of acts of terrorism, shall be punished with a death penalty.
>
> The penalty provided in (1) above shall apply to whoever: (a) offers or promises gifts, presents or any kind of benefit to another with the intention of getting the later to be part of a group that has been established or a deal reached to commit acts of terrorism; (b) threatens or pressurizes another to be part of a group that has been established or a deal reached to commit acts of terrorism;
>
> whoever deliberately joins or undergoes training in a terrorist group abroad with intent to commit acts of terrorism within the country, shall be punished with imprisonment of from 10 to 20 years.

Section 5 (recruitment and training) stipulates that "whoever recruits and/or trains people to participate in the act of terrorism, regardless of where they are committed, shall be punished with the death penalty".

Chapter 2, section 8 (acclamation of acts of terrorism) of the law provides severe charges for all those who acclaims acts of terrorism. *Section 8* states that:

> Whoever publicly acclaims acts of terrorism shall be punished with imprisonment of, from 15-20 years or a fine of, from twenty-five million francs (25.000.000) FCFA to fifty million (50.000.000) FCFA or both such imprisonment and fine.

3. Analysis of the law

The relevance of an effective legal framework for the fight against terrorism cannot be over- emphasized. However, formulating such a legal protection is not without its own difficulties. This section provides a critical analysis of the 2014 Cameroon anti-terrorism law. In doing so, it focuses on the provisions of the law, its ramifications on press freedom and freedom of expression, as well as the right to peaceful assembly (legitimate peaceful protests).

Drawing from the provisions of the law, this paper argues that like *article 1* of the UK anti-terrorism law, *article 2* of the Cameroon anti-terrorism law is very broad on the definition of terrorism. The law criminalizes not only acts that are widely understood as 'terrorist' in nature but also lawful gatherings and protests and other forms of behaviour that cannot be regarded as terrorism. Looking at the

scope of the law, *article 2* of the Cameroon anti-terrorism law, anyone who disrupts the functioning of public services, the delivery of essential services to the population, or creates a situation of crisis among the public, can be sanctioned with the death penalty.

In the case of *Sergey Kuznetzov v. Russia*, the European court of human rights (ECtHR) underscored that:

> Any demonstration in a public place inevitably causes a certain level of disruption to ordinary life; including disruption to traffic, and that it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by article 11 of the convention is not to be deprived of all substance. The court stressed that "any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles-however shocking, and unacceptable certain views or words used may appear to the authorities-do a disservice to democracy and often even endanger it". In this case, the court found a violation of article 11 of the convention interpreted in the light of article 10 of the convention.

Furthermore, I contend that there are so many protests and demonstrations that have taken place both in Cameroon and elsewhere in the world that disrupted the functioning of public services and the delivery of essential services to the population that cannot be regarded as terrorism. For instance, the 2008 Cameroon protests which were a series of demonstrations in Cameroon's biggest cities that took place from 25 to 29 February 2008. The protests followed on the heels of a strike by transport workers, who were opposing high fuel prices and poor working conditions. Further political turmoil had been caused by President Paul Biya's announcement that he wanted the constitution to be amended to remove term limits; without such an amendment, he would have to leave office at the end of his term in 2011. Similarly, one may not ignore the Arab Spring, the wave of pro-democracy protests and uprisings that took place in the Middle East and North Africa beginning in 2010 and 2011, challenging some of the region's entrenched authoritarian regimes. Also, the orange revolution, a series of protests and political events that took place in Ukraine from late November 2004 to January 2005, in the immediate aftermath of the run-off vote of the 2004 Ukrainian presidential election, which was claimed to be marred by massive corruption, voter intimidation and direct electoral fraud. The above activities disrupted the functioning of public services, the delivery of essential services to the population, and created a situation of crisis among the public but could these activities be regarded as acts of terrorism and its proponents sanctioned with the death penalty?

The law is unconstitutional. This is because it includes the death penalty as a sanction to terrorism. In doing so, the law violates the right to life and human dignity which are guaranteed in the preamble to the constitution. *Chapter 1, section 1* of the law stipulates that:

> This law relates to the suppression of acts of terrorism. The provisions of the penal code, the criminal code and the military justice code that are not repugnant to this law shall remain applicable. The offences provided for in this law shall fall exclusively under the jurisdiction of military tribunals.

This paper argues that International law prohibits the use of military courts to try civilians. As we are going to see below, many Cameroonians in general and Cameroon anglophone activists in particular have been tried in military tribunals across the country. For instance, Mancho Bixby, a Cameroonian anglophone activist and radio journalist was tried, convicted, and sentenced before a military court. There is widespread international consensus that trials of civilians by military tribunals contravene the non-derogable rights to a fair trial by a competent, independent and impartial court to the extent that they violate rights guaranteed by instruments such as the UDHR, ICCPR and the Banjul Charter. The case law of the ACHPR is very clear on the fact that military tribunals lack authority to try civilians. In the *Kevin Mgwanga Gunme et al vs. Cameroon* case, the African Commission stated that:

> Trial by military courts does not per se constitute a violation of the right to be tried by a competent organ. What poses a problem is the fact that, very often, the military tribunals are an extension of the executive, rather than the judiciary. Military tribunals are not intended to try civilians. They are established to try military personnel under laws and regulations which govern the military.

In *Communication 218/98 Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria,* the Commission underlined that "the military tribunals are not negated by the mere fact of being presided over by military officers. The critical factor is whether the process is fair, just and impartial".

In the case of *Media Rights Agenda v. Nigeria*, the ACHPR found that special tribunals set up by the military regime with an ouster of the jurisdiction of the ordinary courts "violates the right to have one's cause heard, under *article 7.1*. The ACHPR confirmed the prohibition in the Resolution on the Right to a Fair Trial and Legal Aid in Africa that states in Principle L:

- The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel

- While exercising this function, Military Courts are required to respect fair trial standards enunciated in the African Charter and in these guidelines
- Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences that fall within the jurisdiction of regular courts.

The UN Human Rights Committee (HR Committee) through Concluding Observations on States' reports, General Comments interpreting the ICCPR and Views regarding complaints, agrees that "the jurisdiction of military tribunals is restricted to offences of a strictly military nature committed by military personnel". In 1984, the HR Committee affirmed in its *General Comment 13* that military tribunals are prohibited from trying civilians except in extraordinary, objectively determined and narrowly defined circumstances such as cases where fair, independent and impartial civilian courts are unavailable.

The law has gone beyond prohibiting acts of terrorism or their instigation to prohibit the acclamation, encouragement, glorification and even encouragement of terrorism. *Chapter 2, section 8* (acclamation of acts of terrorism) of the law provides severe charges for all those who acclaim acts of terrorism. This paper is concerned that the above provisions violate the right to freedom of expression and assembly. This paper argues that freedom of expression protects not only views that are favorably received but precisely all those that are controversial, shocking or offensive. In the 1992 *Open Door and Dublin Well Women vs. Ireland* case, the European court of human rights reasserted that:

> Freedom of expression was particularly precious as a way of communicating information or ideas that offend, shock or disturb the state or any sector of the population; as such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society.

Thus, the terminology employed by the anti-terrorism law is so vague and fail to meet the requirement that restrictions on freedom of expression should be prescribed by law. What amounts to 'acclaims acts of terrorism'? The use of the expression is of particular concern as its interpretation is likely to be highly subjective. According to *Article 19* (2006:8), glorification, justification, or any other form of expression concerning terrorism, or any form of violence can be prohibited unless it is clearly intended to directly incite such conduct. It is significant to the guarantee of freedom of expression and the right to peaceful assembly that any interference for the purpose of national security, including countering terrorism, is closely linked to preventing or mitigating imminent violence.

According to *article 18(3)* of the ICCPR which Cameroon ratified in 1984, any restriction or interference on the right to freedom of expression must be "prescribed by law" and "must be necessary in a democratic society". Drawing from the case law of the ECtHR, necessary in a democratic society amounts to a "pressing social need". This presupposes that measures taken for the restriction or interference of fundamental freedoms must be effective and the scope and effects of the limitation must be proportionate in relation to the importance of the resulting interest to be protected (Muma, 2017). The expression provided by law, however, presupposes that a limitation on freedom of expression must be laid down in law with sufficient precision, must be transparent and accessible to the public. The word law in this context has an autonomous meaning. It is the force of politically organized society and incorporates for instance written and unwritten laws (Gardner, 2001), such as the constitution, anti-terrorism law, criminal law etc.

According to *article 18(3)* of the ICCPR, the expression "prescribed by law" also implies that any interference with freedom of expression must adequately specify the permissibility of a given restriction by the authorities. In other words, for a norm (anti-terrorism law) to be characterized as law, it must be well formulated and explicit so as to guide the society on how and when to exercise their fundamental rights and freedoms, and must be compatible with international human rights standards. The Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) guidelines also point to the fact that for a norm to be characterized as law, it must be compatible with international human rights standards and be sufficiently precise to enable an individual to assess whether or not his/her actions or conduct would be in breach of the law and the likely consequences of such transgressions (ODIHR/OSCE, 2010).

According to Muma (2017), the UN human rights committee as an interpretative guideline has observed that for a norm to become law, it must be formulated with sufficient precision to enable an individual to regulate his/her conduct accordingly, and must be made accessible to the public. Laws should provide sufficient guidance to all those charged with its execution to enable them to ascertain what sorts of expressions or freedoms are to be restricted and what sorts are not. Furthermore, the human rights committee has argued that offences as "encouragement of terrorism", and "extreme activity" as well as offences of "acclaiming, praising, glorifying or justifying terrorism" should be carefully defined to ensure

that they donot lead to unnecessary and disproportionate interferences with human rights and freedoms (Muma, 2017; General Comment, No. 34).

By the same token, the African Commission guidelines regarding countering terrorism in Africa has stressed that any criminalization of or other punishments for acts of terrorism must abide by the principle of legality and, as such, states should ensure that their laws criminalizing acts of terrorism are accessible to the public, defined by clear and precise provisions in the law, non-discriminatory and non-retroactive, and must be directed only against acts done knowingly and with intent and in accordance with international law. In the *Sunday Times vs. UK* case, the ECtHR clearly stated that:

> A norm cannot be regarded as a law unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able if need be with appropriate advice to foresee to a degree that is reasonable in the circumstances, the consequences which a given action may entail.

The court has reasoned that laws which are not formulated with sufficient precision are considered vague. This is the case because vague and broad provisions (as is the case with the Cameroon 2014 anti-terrorism law) are susceptible to wide interpretation by both the authorities and those subjected to the law. As we are going to unpack sooner below, in Cameroon in particular, such laws has been susceptible to abusive interpretation by the authorities, most especially the judiciary which enjoys limited autonomy. According to Ben Emmerson, special rapporteur on the promotion of human rights and freedoms while countering terrorism, "vagueness of concept could lead to its use against members of religious minorities, civil society, human rights defenders, peaceful separatists, indigenous groups and members of opposition political parties" (Muma, 2017). In other words, the provisions of a given law must be formulated with sufficient legal precision so that the possibility of commission of an offence is foreseeable. Drawing from the above analysis, this paper argues that the Cameroon anti-terrorism law is unconstitutional, vague, very broad and imprecise. According to AI (2015) report on Cameroon, the law infringes on so many basic rights and freedoms protected in the constitution and international human rights law. The Cameroon National Commission on human rights and freedoms (NCHRF) is concerned that the degrading security situation in the country could provide justification for the application of the law, or encourage the authorities to use their sweeping powers to suppress press freedom, freedom of expression and the right to peaceful assembly (NCHRF, 2015).

The 'Johannesburg Principles', a set of principles on freedom of expression and national security developed by a group of experts from around the world, argues that restrictions on freedom of expression in the name of national security may be imposed only where the speech was intended to incite imminent violence and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence. *Principle 6* stipulates that:

Expression must be punished as a threat to national security only if the government can demonstrate that:

- The expression is intended to incite imminent violence
- It is likely to incite such violence and
- There is a direct and immediate connection between the expression and the likelihood of occurrence of such violence (Article 19, 2006).

The ECtHR decision in the case of *Karatas vs. Turkey* is particularly instructive. The complainant had been convicted for the publication of poetry that allegedly condoned and glorified acts of terrorism (note the similarity between this case to the new offences under the Cameroon 2014 anti-terrorism law). The court noted as a matter of fact that in Turkey violent terrorist attacks was a daily reality. But even in a context of regular threats to national security, the court underlined the fundamental nature of the applicant's right to freedom of expression and held that his conviction constituted a violation of that right. Highlighting that there was no congruity or causal connection between the poems and violence, the court held:

> In the instant case, the poems had an obvious political dimension. Using colorful imagery, they expressed deep-rooted discontent with the lot of the population of Kurdish origin in Turkey. In that connection, the court recalls that there is little scope under article 10(2) of the convention for restrictions on political speech or on debate on matters of public interest … .In a democratic society, the actions and omissions of the government must be subject to the close scrutiny not only of the legislative and judiciary authorities but also of public opinion. Moreover, the dominant position which government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of the adversaries … .Even though some of the passages from the poems seem very aggressive in tone and to call for the use of violence, the court considers that the fact that they were artistic in nature and of limited impact made them less a call to an uprising than an expression of deep distress in the face of a difficult political situation.

Drawing from the strength of the court's judgment in *Karatas vs. Turkey*, a general prohibition of glorification of violence cannot be justified. Only those statements of glorification and acclamation of acts of terrorism that can be said to actually incite violence may be legitimately prohibited. The ensuing paragraphs provides more impetus and illuminates clearly the above arguments.

The 2014 anti-terrorism legislation and press freedom and freedom of expression

Cameroon is a member of the UN, party to the UDHR, the ICCPR and its Optional Protocol and a member of the ACHPR. Cameroon ratified the ICCPR on January 27, 1984 and it came into force on the 27 of April that same year. Article 2(2) of the ICCPR states that:

> Where not provided for by existing legislative or other measures, each state party to the present covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present covenant.

This means that Cameroon has a positive obligation not only to refrain from interfering with freedom of expression but also to protect journalists and media organizations from unlawful interference. Thus, the obligation to respect freedom of opinion and expression is binding on Cameroon. However, the 2014 law on the suppression of acts of terrorism in Cameroon has been invoked to arrest, trial and detain journalists, peaceful protesters and Cameroon anglophone activists as we are going to unpack below. On July 30th, 2015 Ahmed Abba, a *Radio France International* (RFI) correspondent was arrested and after 2 years in custody convicted by a military tribunal for "non-denunciation of terrorism" and "laundering of the proceeds of terrorist attacks". The journalist was sentenced to 10 years in prison. However, he was finally released in December 2017 after a military appeal court in Yaoundé reduced his jail term to 24 months (CPJ, 2017).

Radio journalist, Mancho Bibixy, who was arrested in 2017 on terrorism charges after he advocated for Anglophone rights and criticized government policies, was sentenced to 15 years' imprisonment in May 2018. On 23rd October 2018, editor of the privately owned *Hurinews.com* website and human rights advocate, Michel Biem Tong was arrested. He was accused of 'glorification of terrorist acts'. Biem Tong had been reporting on human rights violations committed by the

authorities in the anglophone regions, criticizing government handling of the crisis that started in 2016. CPJ (2018) contends that since 2016 Cameroon has repeatedly jailed journalists for reporting in the western regions of the country.

On 31st October 2018, Mimi Mefo, head of the English language news of the privately owned *Equinoxe television* and *Equinoxe radio*, was arrested and later placed in preventive detention on 7th November 2018 but released 4 days later following unprecedented national and international mobilization. The authorities argued that Mimi disseminated fake news likely to harm public authorities and that the said crime is punishable under *section 113* of the criminal code. Mimi Mefo maintained that:

> The regime has been using anti-terror and cybercrime laws to intimidate, threaten and silence the media. Since 2017, at least 20 journalists have been arrested and jailed in Cameroon for doing their jobs". According to the journalist, "I stopped publishing information on Facebook and my website for several months because of constant threats and intimidation. The crisis in Cameroon remains highly under-reported. Journalists are not guaranteed safety when travelling to conduct investigations, and access to information is a major problem. A government who imprisons a journalist is weak, scared of being exposed (Mefo, 2019).

According to the CPJ (2017):

> The authorities are using the law against journalists such as Abba who report on the militants and others who have reported on unrest in Cameroon's English-speaking regions or are critical of Biya's administration. In addition to detaining journalists, authorities have banned news outlets deemed sympathetic to the anglophone protests, shut out internet in regions experiencing unrest and prevented outside observers, including CPJ, from accessing the country by delaying the visa process.

Thus, under the 2014 anti-terrorism legislation, Cameroonian journalists are regularly unfairly judged, convicted, jailed or threatened. This has wider consequences for Cameroon and the sub region. First, such threats have driven Cameroon to become the second jailer of journalists in Africa with 7 journalists behind bars for their work as of December 1, 2018, according to CPJ's annual prison census. According to CPJ, Cameroon comes only behind Eritrea, ranked first (CPJ, 2019). The current situation has impacted on the country's press freedom ranking. Cameroon is currently ranked 131 out of 180 countries in *Reporters sans Frontières'* world press freedom index of 2019. The situation was not any better in 2018 when Cameroon was ranked 129th out of 180 countries.

Also, for those journalists who want to escape trouble, 'self-censorship' often becomes a habit. Self-censorship is convenient for semi-authoritarian states, as

constraints are appropriated and established inside the minds of journalists: encouraging self-censorship around sensitive issues is the ideal way to operate the most discreet form of prior control (Frère, 2015). As Ottaway (2004, 163) argues, in such a context, 'a degree of self-censorship allows independent newspapers to exist, but also limits their risk. Therefore, in these contexts public authorities can claim to be supporting press freedom and freedom of expression, but they may use other underhand means to undermine the media's potential to trigger change within society. This kind of 'double speak' might see government passing a law protecting press freedom, freedom of expression, the protection of journalistic sources and the right to peaceful assembly, while at the same time threatening journalists to reveal confidential sources or arresting people for exercising their rights to peaceful assembly and charging them with terrorism.

While the anti-terrorism law and the criminal code have been invoked to trial many journalists working for private media outlets who are guilty of fake news or spreading false information, it is disturbing to realize that this trend has not been applicable to the state-owned media. A state-owned television (CRTV) report in the aftermath of the 2018 presidential election included supposed *Transparency International* (TI) observers praising the electoral process. TI issued a statement after the report was aired, asserting that they had no election observers in Cameroon. While CRTV fake news concerning election observers from TI approving the conduct of the presidential poll infringes on all aspects of journalistic canons and *section 113* of the criminal code, neither the institution nor the journalist responsible took responsibility. Even more, at year's end, the debunked story remained on CRTV's website.

Furthermore, in July 2018, a video circulated online that showed the extrajudicial executions of two women and two children by Cameroonian soldiers who accused them of involvement with Boko Haram. The minister of communication and government spokesman vehemently denied on television that the accused soldiers were Cameroonian and termed the video report as fake news intended to tarnish the image of the Cameroon military and the country. However, in September, after initially denying that the military was responsible for the crimes, the government announced that seven soldiers had been arrested and would be tried for murder (O' Gray, 2018)

The 2014 anti-terrorism legislation and the right to peaceful assembly

This section demonstrates how the anti-terrorism legislation of 2014 has been invoked to arrest, trial and detain Cameroonians exercising their rights to peaceful assembly. This paper argues that peaceful direct action has historically challenged practices that were legal at the time, but which we now find abhorrent, such as slavery, racial segregation and color or gender-based voting rights. It is for this reason that all states would do well to honor and respect their human rights obligations regarding freedom of expression and the right to peaceful assembly.

Since October 2016, the English-speaking part of Cameroon has experienced serious repression and continuous human rights violations following peaceful protests and an ensuing series of sit-in strikes and non-violent actions initiated by common law lawyers and teachers' trade unions in protest against government policy of assimilation through the imposition of civil law judges to preside over cases in common law courts and French-speaking teachers to teach in English schools. Civil society organizations coordinating the strikes and protest actions were banned on 17 January 2017. Leaders, including Justice Ayah Paul Abine (Supreme Court Judge), Felix Agbor Balla (prominent international human rights lawyer), Dr Neba Fontem (a university lecturer), Mr. Mancho Bibixy (a civil rights activist), and hundreds of other activists and protesters were arrested and transferred to the nation's capital, Yaoundé (a civil law jurisdiction). They are being tried in a military court on charges of terrorism, which carries the death penalty if found guilty.

However, on 30th August 2017, president Paul Biya signed a decree ordering the release and dropping of all charges against arrested leaders of the Anglophone South West and North West regions. The leaders released included Lawyer Felix Nkongho, Dr Neba Fontem, and Ayah Paul Abine among others. According to Amnesty International (2017):

> Today's decision to drop all charges and release of Anglophone civil society leaders, including Barrister Nkongho Felix Agbor-Balla and Dr Fontem Aforteka'a Neba, and several others who spent over six months in jail is an enormous relief and welcome news for everyone who has been campaigning for this outcome. They should never have been arrested and prosecuted in the first place for simply helping to organize peaceful, non-violent protests.

Since the above interferences, freedom of expression and freedom of assembly have been subjected to significant restrictions. Authorities continued to repress protests in the Anglophone regions in 2018. In March, more than 100 women in

the *Cameroon People's Party* (CPP) were arrested and detained for several days for staging a demonstration to protest the humanitarian crisis in the Anglophone regions. Assembly rights were also curtailed after the election. In November, authorities arrested 20 protesters in Yaoundé who claimed that Maurice Kamto had won the election. On 28th Jan 2019, opposition party leader Maurice Kamto, president of *Movement for the Renaissance of Cameroon* (MRC), who came second in the October 2018 presidential election, was arrested in Douala along with two of his supporters, Albert Dzongang and Christian Penda Ekoka. More than 200 militants of the party, including the party's former campaign manager, Paul Eric Kingue and popular musician Gaston Serval Abe, were arrested in marches in several cities including Yaoundé, Douala, Bafang, Dschang and Bafoussam. The *MRC* had called for peaceful public protests or "marches blanches" across the country to protest alleged mass irregularities in the electoral process, electoral fraud, outright denunciation of the proclamation of the October 22, 2018 presidential results and generalized injustices in Cameroon. Also, Michele Ndoki, vice president of the women's directorate of the *MRC* was arrested on 26th Febraury, 2019 in Idenau, South West region. The firebrand lawyer is behind bars facing charges of rebellion, insurrection and hostility against the fatherland, same as *MRC leader,* Maurice Kamto and over 150 militants, of the same party. For human rights advocate, Agbor Balla, speaking to RFI journalist, Okello (2019) the charges are all too familiar:

> The charges are bogus. These are the charges that the government brought against me. It's a way to fight against dissent, repress people, and to perpetuate Mr. Biya's reign as they have been doing for the last 36 years.

Drawing from the above, this paper argues that Cameroon has consistently moved to restrict activists, lawyers and teachers' organizations in their ability to criticize and peacefully protest its policy of assimilation. Peaceful protests by Cameroonians have been depicted as acts of violence, revolution, secession, collective rebellion, hostility against the state and terrorism, and these qualifications have been used to call for far-reaching restrictions. The use of peaceful protests to further change in society is obviously not the exclusive domain of lawyers and teachers and militants of the political parties in Cameroon. In fact, it is embedded in history as a driver for positive change. Where demonstrations do not engage in acts of violence, it is important for the public authorities to exercise tolerance towards peaceful gatherings if the freedom of expression and of assembly guaranteed by the constitution of Cameroon is not to be deprived of all its substance.

It is the responsibility of each government to respect the right to freedom of expression and assembly and to justify any restriction to them. Government statements which wrongfully equate the exercise of this right by activists, political parties' militants, lawyers and teachers with hostility against the state, revolution, collective rebellion, propagation of false news, terrorism and secession should be condemned. Such false allegations can have a dangerous chilling effect. It has the tendency to undermine the activities of the person or organization involved, endangering the further exercise of freedom of expression. Even more, by labelling its critics terrorists, the government may discourage other citizens from voicing their opposition to official policy of assimilation.

4. Importance and scope

In 2001, the ACHPR meeting at its 29th Ordinary Session in Tripoli passed a resolution on freedom of expression. Recalling *article 9* of the ACHPR which guarantees the right to freedom of expression and recognizing that freedom of expression is an essential attribute of human existence in all spheres of life and that there is now widespread international recognition of the cardinal role of freedom of expression in human progress; noting that freedom of expression is a potent and indispensable instrument for the creation and maintenance of a democratic society and the consolidation of development; mindful of the potentially narrow scope of protection given by *article 9* of the ACHPR, the ACHPR has decided to:

- To develop and adopt, through a consultative process, a Declaration of Principles on Freedom of Expression, drawn from a comprehensive range on international standards and jurisprudence, to elaborate and expound the nature, content and extent of the right to freedom of expression provided for under *Article 9* of the African Charter,
- To initiate an appropriate mechanism to assist it review and monitor adherence to freedom of expression standards in general, the Declaration to investigate violations and make appropriate recommendations to the Commission,
- To hold periodic meetings with NGOs and African journalists to review progress in guaranteeing freedom of expression across the continent and in implementing the Declaration of Principles.

It is also important to underline that the right to freedom of expression is not limited to spoken or written communication but applies equally to acts and behavior which convey an opinion, including peaceful protests, demonstrations (as those exercised by Cameroon anglophone activists, lawyers and teachers as well as MRC party militants) and campaigners. The *United Nations Human Rights Committee* (HRC), which oversees the implementation of the ICCPR, has reiterated that '*article 19, paragraph 2*, must be interpreted as encompassing every form of subjective ideas and opinions capable of transmission to others.

In Maseko v. The Prime Minister of Swaziland case (2016), the High Court of Swaziland held that certain sections of the Sedition and Subversive Activities Act No. 46 of 1938 and the Suppression of Terrorism Act 3 of 2008 infringed the fundamental rights to freedom of expression and association guaranteed by the Constitution. Further, the court found it unlawful to limit free speech for the sole purpose of shielding the government from criticism or discontent. The applicants had been arrested on charges of sedition, subversion and terrorism for their membership in an opposition movement, wearing its t-shirts and chanting slogans associated with the movement.

The court reiterated that freedom of expression 'is not absolute and as such, there are limits within which it may be exercised'. Considering its own jurisprudence and a number of foreign cases on the validity of restrictions on free speech, the court addressed whether the limitations imposed by the Act were "proportional to the mischief sought to be regulated or whether there is a rational connection between such limitations and objectives to which restrictions or limitations relate. The court held that the objectives or interests "may only be of 'defence, public safety, public order, public morality or public health' or the other interests enumerated under *section 24(3) or 25(3)* of the constitution. On the other hand, the court found it unlawful to limit free speech for the sole purpose of shielding the government from criticism or discontent.

As to the impugned provisions of the *Suppression of Terrorism Act of 2008*, the Court first determined that the arrest of the applicants for belonging to the *People's United Democratic Movement,* chanting its slogans and wearing t-shirts associated with the movement interfered with their rights to freedom of expression and association. The court went on to state that the government did not provide enough justification as to why such limitations could be appropriate under the *Terrorism Act,* nor did they address whether the enforcement of the impugned provisions was proportional to the applicants' conduct.

Also, as recalled by the European Court of Human Rights in the 1998 *Steel and Others vs. United Kingdom* case, 'freedom of expression constitutes an essential foundation of democratic societies and one of the basic conditions for its progress and for each individual's self-fulfillment'. In the 2009 *Women on the waves vs. Portugal* case, the court emphasized the crucial significance of freedom of expression. It argued that freedom of expression constitutes one of the preliminary conditions for the good functioning of a democracy. In the 1992 *Open Door and Dublin Well Women vs. Ireland* case, the court reasserted that "freedom of expression was particularly precious as a way of communicating information or ideas that offend, shock or disturb the state or any sector of the population; as such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society".

5. Duties of the state in relation to peaceful protests and peaceful protesters

With the right to freedom of expression and peaceful assembly clarified, the question arises what the duties of the state (Cameroon) are in respect of these rights. Cameroon ratified the ICCPR on January 27, 1984 and it came into force on the 27 of April that same year. *Article 2(2)* of the ICCPR states that:

> Where not provided for by existing legislative or other measures, each state party to the present covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present covenant.

This means that Cameroon has a positive obligation, not only to refrain from interfering with freedom of expression and peaceful assembly but also to protect protesters from abuse and mistreatment. State parties are required to ensure that the rights contained in *article 19* of the covenant are given effect in domestic law. State party should include information on available remedies when these rights are being violated.

The African Commission on Human and Peoples' Rights (The Commission) has also passed a resolution on the right to peaceful demonstrations. The Commission meeting at its 55th Ordinary Session held from 28 April to 12 May 2014, in Luanda, Angola called on all states' parties to:

- Refrain from conducting arbitrary arrests and detentions of demonstrators and calls for their immediate release;

- Refrain from disproportionate use of force against demonstrators whilst fully complying with international standards on the use of force and firearms by law enforcement officials;
- Conduct impartial and independent investigations into all human rights violations to ensure that all perpetrators are held accountable;
- Protect peaceful protesters regardless of their political affiliation, and/or sex;
- Fully abide by their regional and international obligations to respect fundamental rights and freedoms;
- Uphold the right to a fair trial before an independent ordinary court of law and put an end to arbitrary arrests and detentions and to the use of special courts, including military tribunals for civilians;
- Ensure that any legislation governing the exercise of fundamental human rights fully complies with the relevant regional and international standards.

In the case *Njaru v. Cameroon, Communication No. 1353/2005*, 3 April 2007, the UN Human Rights Committee found Cameroon in breach of its obligations under the ICCPR, notably the prohibition against torture and ill-treatment and the right to freedom of expression. In *Kevin Ngwanga et al v. Cameroon,* the African human rights commission found a violation of *article 4* of the charter. The communication gives account of people who were killed by the police during violent suppressions of peaceful demonstrations. The respondent state admitted to the death of six people on 26 March 1990, which occurred after a confrontation between security forces and demonstrators, whom it argued, were involved in an illegal political rally in Bamenda. Drawing from the above, we realized that judgments from the ACHPR and the UN Human Rights Committee indicate that the duty resting on the national (Cameroon) authorities may go further than a duty to merely tolerate peaceful assembly and the exercise of the right to freedom of expression-in fact a positive obligation may exist as the cases above elucidate.

Discussion and Conclusion

In this paper, I have argued that regardless of whether peaceful protests against government policy of assimilation are legal or not, it is a subject of public interest and one that is hotly debated in society (Cameroon), and this observation alone

obliges governments to exercise restraint in interfering with it. The case law discussed above demonstrates that the fundamental rights to freedom of expression and the right to assembly, including the right to take part in non-violent direct action, are well recognized in international law. Restrictions may apply, in the interest of public order, safety etc. but these should be prescribed by law and necessary in a democratic society, be proportionate to the legitimate aim being pursued and should consider the significant role of freedom of expression and peaceful protests in a democratic society.

It is the responsibility of each government to respect the right to freedom of expression and the right to peaceful assembly or protest, and to justify any restriction to it. Government statements which falsely equate the lawful exercise of these rights with "acts of terrorism, hostility against the country, secession, revolution, propagation of false news, collective rebellion, group rebellion, collective resistance" should be condemned.

Acts of terrorism, hostility against the country, secession, revolution, propagation of false news, collective rebellion, group rebellion and collective resistance are the most serious allegations that can be levelled against anglophone activists, common law lawyers and teachers trade unions, opposition political parties militants and other alternative voices protesting peacefully against government policies. Not only do such false allegations constitute a violation of *article 17* of the ICCPR, which guarantees the right to remain free of any unlawful attack by the government to one's honour and reputation, they also undermine the activities of the person or organization concerned, endangering the further exercise of freedom of expression and the right to peaceful protest. It thus has a dangerous chilling effect.

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